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# Witness Bolsters Tafoya's Claim Of Self Defense

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FORT COLLINS — A gun and a witness provided defense attorney Walter Gerash with all the material he needed Friday to start building a self-defense case for former Green Beret Eugene Tafoya, accused of trying to kill Libyan dissident Faisal Zagallai.

The irony of Friday's developments, which provided strong ammunition for Gerash and stung prosecutors, was that they occurred in the early stages of Larimer County District Attorney Stuart VanMeveren's case.

VanMeveren and his assistant, Chief Deputy District Attorney Larry Abrahamson, called both the witness, Gregory Andre Barnes, and introduced the gun, a 9mm semiautomatic pistol.

Barnes' witness account substantiated points of Tafoya's claims that he shot Zagallai in self-defense, although he also said Tafoya was not the man he saw fighting with Zagallai the night Zagallai was shot. And the gun, purchased by Zagallai six months before he was shot twice in the head on the night of Oct. 14, 1980, fit perfectly into the defense's version of what happened at the Libyan's apartment.

On Thursday, during opening statements, Gerash told the nine-woman, three-man jury that Tafoya was under the impression he was working for the CIA when he visited Zagallai, a claim the CIA has denied. Gerash also told the jury that during the visit, — in which Tafoya claims he asked Zagallai to stop sending provocative messages to the Middle East — Zagallai brandished the 9mm semiautomatic which he had hidden under the cushions of a sofa.

Gerash claims Tafoya jammed the weapon back down into the sofa at which point Zagallai tried to grab a gun Tafoya had under his jacket. During the resulting brawl, Tafoya fired the gun in self-defense, according to the defense story.

The defense also has stressed that while Zagallai was shot twice, several witnesses believe they heard three shots. Gerash has strongly suggested that the mysterious "third shot" may have come from Zagallai's weapon.

On Thursday, the defense stipulated that Tafoya was at the Zagallai apartment at the time of the shooting and that Tafoya was carrying a .22-caliber revolver. Three and one-half months after the shooting, a .22-caliber handgun police believe was used in the shooting was found in Fort Collins and traced to Tafoya, who lives in Truth or Consequences, N.M.

While it took authorities four months to recover what they believe is the weapon used to shoot Zagallai, Fort Collins police Sgt. Robert Mason told the jury Friday he recovered Zagallai's 9mm semiautomatic the night of the shooting.

He said he discovered it under a sofa cushion fairly close to the edge of the cushion.

Mason said the gun had bullets in it when he found it. But under tough questioning by Gerash, the police officer admitted he hadn't counted the number of bullets in the gun's clip and didn't remember if there was a bullet in the weapon's chamber.

Although the 9mm pistol fits nicely into the defense theory, Gerash was beside himself with joy following the testimony of Barnes, who Gerash claims is the only independent witness to the struggle between Tafoya and Zagallai.

The fact that Barnes also told the jury, which is listening to the case in the court of Larimer County District Judge J. Robert Miller, that Tafoya wasn't the man he saw struggling with Zagallai seemed not to lessen Gerash's pleasure.

Gerash said after Barnes' testimony that it probably won the case for Tafoya, accused of attempted first-degree murder and conspiracy to commit first-degree murder.

Barnes, a neighbor of Zagallai, said he was watching television when he heard a woman — he later identified her as Zagallai's wife — screaming, and heard glass breaking.

At that point, he said, he went to his window, which he said looks directly down and into the Zagallai's living room. There, he said, he saw Zagallai struggling with a man. The man, Barnes said, had a gun in one hand.

At one point, said Barnes, the man was able to get free of Zagallai. Instead of shooting the Libyan, Barnes said, the man bolted for the door only to be grabbed by Zagallai and thrown back into the living room.

In panic the man looked around for a way to escape but couldn't find one, Barnes said. At that point Barnes said the man aimed his gun at Zagallai — who was a mere 4 feet away — and fired.